

**TITLE 16. PROFESSIONAL FIDUCIARIES BUREAU
DEPARTMENT OF CONSUMER AFFAIRS
EMERGENCY ADOPTION OF DIVISION 41
(Commencing with Section 4400)**

EXPRESS FINDING OF EMERGENCY

Senate Bill 1550 (Figueroa, Chapter 491, Stats. 2006) created the new Professional Fiduciaries Bureau (Bureau), within the Department of Consumer Affairs (Department). The Bureau finds that the immediate preservation of the public's health, safety, and welfare requires the emergency adoption of these proposed regulations. In the early stages of implementation of SB 1550, it is necessary to adopt regulations specific to the Code of Ethics and education mandates of the Professional Fiduciaries Act (Act). SB 1550 requires any person who desires to be a Professional Fiduciary in California to become licensed on or after July 1, 2008 (Business & Professions Code Section 6530(a)).

The Bureau's basis for this finding is as follows:

- SB 1550 created the Bureau and requires all practicing professional fiduciaries in California to be licensed on or after July 1, 2008 (Business & Professions Code Section 6530(a)). In order to meet the mandates of the Act the Bureau must immediately adopt a Code of Ethics and promulgate the necessary education requirements for licensure.
- The Code of Ethics must be adopted immediately so that they can be incorporated into the examination, which must be developed and completed by the end of the year. With limited testing options (exam will be offered seven times in different geographic regions throughout the state from January to May 2008), and a new licensing population (estimated between 600 and 1,000), it is important to give all potential licensees an opportunity to test and retest in time to become licensed before July 1, 2008.
- The Bureau must immediately adopt the specific regarding the education mandates so applicants can earn the 30 hours of education credits required for licensing. Immediate education regulations will notify applicants of approved providers and approved courses so that they can take qualifying courses during the 2007 summer and fall sessions, and the 2008 spring session, before the deadline for licensure. It will also give many candidates the assurance they need that they have already met some or all of the prelicensing education requirements.
- Immediate effective regulations for the Code of Ethics and education requirements of the Act will give applicants a fair opportunity to meet the licensing application requirements prior to the July 1, 2008 deadline without suffering undue hardship by having to cease offering fiduciary services to the public. Any temporary or permanent closure of private fiduciary businesses resulting from lack of timely compliance with the Act will cause immediate harm to existing clients, including seniors, disabled

persons, and children, leaving them without critical health and safety services. A practicing professional fiduciary regularly makes important life-altering decisions on behalf of their clients. It is imperative that good-standing fiduciaries retain the ability to make decisions regarding the necessary courses of care, treatment, and medical services for their clients without delay.

- It would be detrimental to the marketplace to lose businesses, owned and operated by private fiduciaries that would otherwise qualify for licensing but have not timely complied with the Act – exposing them to financial hardships causing business losses and some business closures. This could decrease the already predicted small size of the licensing population at a time when the consumer need is rising with the increasing senior population.
- It is an emergency to adopt these regulations in order to provide for the timely adoption of requirements for the Bureau's licensing program to regulate professional fiduciaries to protect the public health, safety, and welfare.

STATEMENT OF SPECIFIC FACTS SHOWING THE NEEDS FOR IMMEDIATE ACTION

SB 1550 (Figueroa, Chapt. 491, Stats. 2006) created the Professional Fiduciaries Bureau (Bureau) to license professional fiduciaries, including private conservators, guardians, trustees, and agents under durable power of attorney for health care and finances. The Legislature declared that the system for conservatorships in California is significantly underperforming and, as a result, harming conservatees and their loved ones (Senate Rules Committee, Floor Analysis, August 31, 2006). The problem is expected to compound as California's senior population grows. According to the findings of SB 1550, the number of California's population 65 years of age or older will grow from 3.6 million people in the year 2000, to 6.2 million people in the year 2020, an increase of 72 percent.

As stated in the legislation, professional fiduciaries are not adequately regulated presently. This lack of regulation can result in the neglect or the physical, emotional or financial abuse of the vulnerable clients that professional fiduciaries are supposed to serve. Unless there is a strengthened accountability, abuses of people who are unable to take care of themselves or their property will increase. Therefore, the creation of a program to license and regulate professional fiduciaries is necessary to protect the public health, safety, and welfare. (SB 1550, SECTION 2)

Under SB 1550, professional fiduciaries are prohibited from offering services on or after July 1, 2008 unless they are licensed. Major components of the licensing program include the requirement to pass an examination, which incorporates a Code of Ethics, and to earn 30 hours of prelicensing education credit.

No examination currently exists so it must be developed. In order to meet the deadline for licensure, the exam must be developed by the end of 2007, and offered early 2008, so applicants have a fair opportunity to take and retake the exam before the deadline. A critical part of the examination, to guarantee a minimum level of competencies by professional fiduciaries, is the Code of Ethics. The Code of Ethics will specify duties of professional fiduciaries, including duties of confidentiality and avoidance of conflict of interests, and will establish standards of practice that are expected in estate and personal care management. In order to develop the exam by the end of the year that includes the Code of Ethics, the Code of Ethics must be adopted immediately. Meeting this timeframe will enable the Bureau to begin offering the examination in January 2008. This will give applicants a total of six months to meet all the licensing mandates (including passing the exam, meeting the education mandates, submitting fingerprints for a criminal background check, etc...) before the deadline.

Education standards must also be adopted immediately. It is necessary to adopt education standards immediately so that applicants are provided timely notice of approved courses and providers. This will give applicants the best possible opportunity under SB 1550 to satisfy the 30 hours of prelicensure credits before the deadline. They will be able to take courses and earn credit over the summer and fall of 2007, and in the spring of 2008. Thirty hours of prelicensing credit can be earned by taking three qualified California State Fullerton courses; one course can be taken each term to meet this qualifications. A portion of the 30 hours of education credit can also be earned by attending the Professional Fiduciary Association of California's 2007 fall conference, which will offer six to seven education units.

Once the examination development process can begin and the applicants have notice of the education requirements, the Bureau will begin drafting regulations to address the daily operations of the program. By January 2008, the application forms and procedures should be available to the candidates so that they have a reasonable amount of time to meet all the licensing mandates of the program prior to July 1, 2008.

Without the immediate adoption of these proposed regulations, professional fiduciary services could come to a halt on July 1, 2008, harming individuals, businesses, and most importantly, consumers. As mentioned above, the services to consumers are critical, involving management of matters of personal care, housing, medical and financial services for seniors and disabled persons under private conservatorships, and to children under private guardianships. Without immediate action, some professional fiduciary businesses would be forced to close, further limiting services to consumers. With the low estimate of the licensing population, 600 to 1,000, and the rising senior population, there is a need to encourage growth of fiduciary services available to consumers, not to decrease the size of the marketplace.

The Bureau is cognizant of the provisions that require agencies to assess the impact that the proposed regulation may have on the applicable marketplace. The Bureau has determined that the education regulation will increase opportunities for education providers and instructors. The Bureau has also determined that the Code of Ethics regulation will improve the quality of services available to the public. This will have the impact of increasing the quality of life for many consumers struggling with aging challenges, including medical and social. Finally, the proposed regulation will protect the public health, safety, and welfare.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section 6517, and to make specific and interpret sections 6518, 6520, 6533, 6535, 6538, 6540, 6541 of the Business and Professions Code, the Professional Fiduciaries Bureau proposes the immediate adoption of Articles 3 and 4 of a new Division 41 of Title 16 of the California Code of Regulations, as follows:

INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Prior to the enactment of SB 1550, the practice of professional fiduciaries, as defined as professional conservators, guardians, trustees, and agents under durable powers of attorney for health care and finances, was loosely regulated. The Department of Justice maintains a Statewide Registry of private conservators, guardians, and trustees, which acts as a clearinghouse of information for the courts to access when considering court appointment of conservators and guardians. This Registry program will sunset July 1, 2008. The Judicial Council of California also regulates private conservators and guardians under existing Rules of Court. The Rules of Courts that relate to the education mandates of private guardians, Rule of Court 7.1010 (Exhibit B), and private conservators, Rule of Court 7.1060 (Exhibit C), will also sunset July 1, 2008.

In 2006, the Legislature passed a series of bills, including SB 1550, to provide a comprehensive scheme to regulate professional fiduciaries both by the state and by the courts. Specifically, SB 1550 created the Professional Fiduciaries Bureau (Bureau) to license and regulate professional fiduciaries under the Professional Fiduciaries Act (Act) to protect the public health, safety, and welfare. As part of the licensing program, the Bureau will assume responsibilities to provide specified information regarding professional fiduciaries to the courts and will regulate the education mandates of professional fiduciaries. In addition, each professional fiduciary shall pass an examination, earn 30 hours of prelicensing credits, and satisfy the other mandates of the Act before July 1, 2008 to become licensed.

In order to establish a program and give applicants a fair opportunity to become licensed before July 1, 2008, the Bureau must first develop an examination, which must include

the legislatively mandated Code of Ethics. Furthermore, the Bureau must establish by regulation the education mandates, which includes the approval of providers and courses. Since the examination requires sufficient time to develop, and since applicants should be given a reasonable amount of time to satisfy the 30 hours of prelicensing education requirement, it is necessary for the Bureau to immediately adopt the proposed emergency regulations.

Emergency regulations will protect the public health, safety, and welfare.

SPECIFIC DESCRIPTION OF PROPOSED REGULATIONS

This regulatory action adds Division 41 to Title 16 of the California Code of Regulations. Specifically, this regulatory action:

Article 3. Prelicensing and Continuing Education

Adds Section 4440.

This section establishes the prelicensing education requirements for professional fiduciaries.

Adds Section 4442.

This section establishes the continuing education requirements for licensees.

Adds Section 4444.

This section sets the criteria for approved education courses for licensing.

Adds Section 4446.

This section recognizes education providers approved by the Bureau.

Adds Section 4448.

This section specifies the requirements for education providers.

Adds Section 4450.

This section defines proof of compliance for prelicensing credits.

Adds Section 4452.

This section defines proof of compliance for continuing education requirements.

Article 4. Code of Ethics

Adds Section 4470.

This section establishes general principles for the Code of Ethics.

Adds Section 4472.

This section specifies decision-making standards for professional fiduciaries acting on behalf of the client.

Adds Section 4474.

This section creates confidentiality standards to protect the personal matters of fiduciary clients.

Adds Section 4476.

This section establishes conflict of interest standards for the management of client affairs.

Adds Section 4478.

This section governs the decision-making process for determining the appropriate residential placement of the client.

Adds Section 4480.

This section establishes decision-making standards for determining the courses of care, treatment, and services that are in the best interest of the client.

Adds Section 4482.

This section establishes professional standards for the management of the client's estate.

Adds Section 4484.

This section governs the duties for limitation or elimination of fiduciary powers, including restoration of capacity, and specifies the duties to terminate the fiduciary relationship.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funds to The State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Local Mandates: None

Significant Adverse Impact on Businesses: None

Impact on Jobs/New Businesses:

The proposed education regulation will create an opportunity for existing education providers to expand course opportunities for professional fiduciaries and will create an opportunity for new instructors for both existing providers and new ones.

Cost Impact on Private Persons or Businesses Directly Affected:

The costs associated with this regulation only include those costs required to meet the education mandates for prelicensing and continued education. Out of the 600 to 1,000 estimated licensing population a portion of license applicants will have already met some or part of the prelicensing education requirements.

As one alternative, assuming that the applicant has not met any of the 30 hours of education credits required for prelicensing, three courses at California State Fullerton, Extended Program, would cost \$1,005.

To meet the ongoing 15 hours of education requirement each year, depending upon the courses taken, it could cost between \$485 - \$625 per licensee, as determined at this time. It is possible that by the time that continuing education must be met, the marketplace will be more competitive, thus forcing costs of education down for licensees.

Effect on Housing Costs: None